

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

TOOTH ACRES, LLC, a Washington limited
liability company; GENE SCHEEL, an individual,

Plaintiffs,

v.

HOODSTOCK RANCH, LLC, a Washington
limited liability company; MARK GORDON
HERON and MARY KATHLEEN HERON,
husband and wife,

Defendant.

Case No. 1:20-CV-3091-TOR

STIPULATED PROTECTIVE ORDER

STIPULATION

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the Court to enter the following Stipulated Protective Order. It does not confer blanket protection on all disclosures or responses to discovery. The protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles, and it does not presumptively entitle parties to file confidential information under seal. The parties to this action stipulate that

1 the following Protective Order applies to documents and information produced or disclosed in
2 this case.
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5 **2. “CONFIDENTIAL” MATERIAL**

6 “Confidential” material shall include the following documents and tangible things
7 produced or otherwise exchanged:
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10 (a) Sensitive financial information that is not otherwise publicly available;
11 (b) Confidential personal information for the parties and their agents;
12 (c) Any other information that a party in good faith believes constitutes or includes
13 sensitive business or organizational information, or personal information or
14 information furnished in confidence by any third party, which information is not
15 known or freely accessible to the general public.
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23 **3. SCOPE**

24 The protections conferred by this agreement cover not only confidential material (as
25 defined above), but also (1) any information copied or extracted from confidential material;
26 (2) all copies, excerpts, summaries, or compilations of confidential material; and (3) any
27 testimony, conversations, or presentations by parties or their counsel that might reveal
28 confidential material. However, the protections conferred by this agreement do not cover
29 information that is in the public domain or becomes part of the public domain through trial or
30 otherwise.
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39 **4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL**

40 **4.1 Basic Principles.** A receiving party may use confidential material that is
41 disclosed or produced by another party or by a non-party in connection with this case only for
42 prosecuting, defending, or attempting to settle this litigation. Confidential material may be
43 disclosed only to the categories of persons and under the conditions described in this agreement.
44 Confidential material must be stored and maintained by a receiving party at a location and in a
45 secure manner that ensures that access is limited to the persons authorized under this agreement.
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1 **4.2 Disclosure of “CONFIDENTIAL” Information or Items.** Unless otherwise
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3 ordered by the court or permitted in writing by the designating party, a receiving party may
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5 disclose any confidential material only to:
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7 (a) the receiving party’s counsel of record in this action, as well as employees of
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9 counsel to whom it is reasonably necessary to disclose the information for this litigation;
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11 (b) the officers, directors, and employees (including in-house counsel) of the
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13 receiving party to whom disclosure is reasonably necessary for this litigation;
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15 (c) experts and consultants to whom disclosure is reasonably necessary for this
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17 litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);
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19 (d) the Court, court personnel, and court reporters and their staff;
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21 (e) copy or imaging services (including any e-discovery vendors) retained by counsel
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23 to assist in the duplication and production of confidential material, provided that counsel for the
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25 party retaining the copy or imaging service instructs the service not to disclose any confidential
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27 material to third parties and to immediately return all originals and copies of any confidential
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29 material;
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31 (f) during their depositions, witnesses in the action to whom disclosure is reasonably
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33 necessary and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit
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35 A), unless otherwise agreed by the designating party or ordered by the Court. Pages of
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37 transcribed deposition testimony or exhibits to depositions that reveal confidential material must
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39 be separately bound by the court reporter and may not be disclosed to anyone except as permitted
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41 under this agreement;
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43 (g) the author or recipient of a document containing the information or a custodian or
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45 other person who otherwise possessed or knew the information;
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47 (h) a mediator, or similar alternative dispute resolution neutral, and his or her staff.
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1 Notwithstanding the foregoing or any other provision of this Stipulation, a designating
2 party may disclose or make use of its own confidential material in any manner it deems
3 appropriate.
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6 **4.3 Filing Confidential Material.** Before filing confidential material or discussing
7 or referencing such material in court filings, the filing party shall confer with the designating
8 party to determine whether the designating party will remove the confidential designation,
9 whether the document can be redacted, or whether a motion to seal or stipulation and proposed
10 order is warranted.
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13 **5. DESIGNATING PROTECTED MATERIAL**

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15 **5.1 Exercise of Restraint and Care in Designating Material for Protection.** Each
16 party or non-party that designates information or items for protection under this agreement must
17 take care to limit any such designation to specific material that qualifies under the appropriate
18 standards. The designating party must designate for protection only those parts of material,
19 documents, items, or oral or written communications that qualify, so that other portions of the
20 material, documents, items, or communications for which protection is not warranted are not
21 swept unjustifiably within the ambit of this agreement.
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24 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
25 shown to be clearly unjustified or that have been made for an improper purpose (e.g., to
26 unnecessarily encumber or delay the case development process or to impose unnecessary
27 expenses and burdens on other parties) expose the designating party to sanctions.
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30 If it comes to a designating party's attention that information or items that it designated
31 for protection do not qualify for protection, the designating party must promptly notify all other
32 parties that it is withdrawing the mistaken designation.
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35 **5.2 Manner and Timing of Designations.** Except as otherwise provided in this
36 agreement (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or
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1 ordered, disclosure or discovery material that qualifies for protection under this agreement must
2 be clearly so designated before or when the material is disclosed or produced.

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4 (a) Information in documentary form (e.g., paper or electronic documents and
5 deposition exhibits, but excluding transcripts of depositions or other pretrial or trial
6 proceedings): The designating party must affix the word “CONFIDENTIAL” to each page that
7 contains confidential material. If only a portion or portions of the material on a page qualifies
8 for protection, the producing party also must clearly identify the protected portion(s) (e.g., by
9 making appropriate markings in the margins).

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11 (b) Testimony given in deposition or in other pretrial or trial proceedings: The
12 parties and any participating non-parties must identify on the record, during the deposition or
13 other pretrial proceeding, all protected testimony, without prejudice to their right to so designate
14 other testimony after reviewing the transcript. Any party or non-party may, within fifteen days
15 after receiving the transcript of the deposition or other pretrial proceeding, designate portions of
16 the transcript, or exhibits thereto, as confidential. If a party or non-party desires to protect
17 confidential information at trial, the issue should be addressed during the pre-trial conference.

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19 (c) Other tangible items: The producing party must affix in a prominent place on the
20 exterior of the container or containers in which the information or item is stored the word
21 “CONFIDENTIAL.” If only a portion or portions of the information or item warrant protection,
22 the producing party, to the extent practicable, shall identify the protected portion(s).

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24 **5.3 Inadvertent Failures to Designate.** If timely corrected, an inadvertent failure to
25 designate qualified information or items does not, standing alone, waive the designating party’s
26 right to secure protection under this agreement for such material. Upon timely correction of a
27 designation, the receiving party must make reasonable efforts to ensure that the material is
28 treated in accordance with the provisions of this agreement.

6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

6.1 Timing of Challenges. Any party or non-party may challenge a designation of confidentiality at any time. Unless a prompt challenge to a designating party's confidentiality designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens, or a significant disruption or delay of the litigation, a party does not waive its right to challenge a confidentiality designation by electing not to mount a challenge promptly after the original designation is disclosed.

6.2 Meet and Confer. The parties must make every attempt to resolve any dispute regarding confidential designations without Court involvement. Any motion regarding confidential designations or for a protective order must include a certification, in the motion or in a declaration or affidavit, that the movant has engaged in a good faith meet and confer conference with other affected parties in an effort to resolve the dispute without Court action. The certification must list the date, manner, and participants to the conference. A good faith effort to confer requires a face-to-face meeting or a telephone conference.

6.3 Judicial Intervention. If the parties cannot resolve a challenge without Court intervention, the designating party may file and serve a motion to retain confidentiality. The burden of persuasion in any such motion shall be on the designating party. Frivolous challenges, and those made for an improper purpose (e.g., to harass or impose unnecessary expenses and burdens on other parties) may expose the challenging party to sanctions. All parties shall continue to maintain the material in question as confidential until the Court rules on the challenge.

7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

If a party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this action as "CONFIDENTIAL" that party must:

1 (a) promptly notify the designating party in writing and include a copy of the
2 subpoena or court order;
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4 (b) promptly notify in writing the party who caused the subpoena or order to issue in
5 the other litigation that some or all of the material covered by the subpoena or order is subject to
6 this agreement. Such notification shall include a copy of this agreement; and
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9 (c) cooperate with respect to all reasonable procedures sought to be pursued by the
10 designating party whose confidential material may be affected.
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13 **8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

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15 If a receiving party learns that, by inadvertence or otherwise, it has disclosed confidential
16 material to any person or in any circumstance not authorized under this agreement, the receiving
17 party must immediately (a) notify in writing the designating party of the unauthorized
18 disclosures, (b) use its best efforts to retrieve all unauthorized copies of the protected material,
19 (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of
20 this agreement, and (d) request that such person or persons execute the “Acknowledgment and
21 Agreement to Be Bound” that is attached hereto as Exhibit A.
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30 **9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL**

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32 When a producing party gives notice to receiving parties that certain inadvertently
33 produced material is subject to a claim of privilege or other protection, the obligations of the
34 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This
35 provision is not intended to modify whatever procedure may be established in an e-discovery
36 order or agreement that provides for production without prior privilege review. The parties agree
37 to the entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth herein.
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46 **10. NON TERMINATION AND RETURN OF DOCUMENTS**

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48 Within 60 days after the termination of this action, including all appeals, each receiving
49 party must return all confidential material to the producing party, including all copies, extracts
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1 and summaries thereof. Alternatively, the parties may agree upon appropriate methods of
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3 destruction.

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5 Notwithstanding this provision, counsel are entitled to retain one archival copy of all
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7 documents filed with the court, trial, deposition, and hearing transcripts, correspondence,
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9 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert
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11 work product, even if such materials contain confidential material.

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13 The confidentiality obligations imposed by this agreement shall remain in effect until a
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15 designating party agrees otherwise in writing or a court orders otherwise.

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19 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

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23 DATED this 31st day of December, 2020.

24
25 s/ Erick J. Haynie

26 Erick J. Haynie, WSBA No. 37128
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43 *Attorney for Plaintiffs*

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ORDER

PURSUANT TO STIPULATION, IT IS SO ORDERED.

IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of any documents in this proceeding shall not, for the purposes of this proceeding or any other proceeding in any other court, constitute a waiver by the producing party of any privilege applicable to those documents, including the attorney-client privilege, attorney work-product protection, or any other privilege or protection recognized by law.

DATED this 4th day of January 2021.



A handwritten signature in blue ink that reads "Thomas O. Rice". The signature is written in a cursive, flowing style.

Thomas O. Rice
United States District Judge

EXHIBIT A

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

TOOTH ACRES, LLC, a Washington limited
liability company; GENE SCHEEL, an individual,

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Defendant.

Case No. 1:20-CV-3091-TOR

**ACKNOWLEDGEMENT AND
AGREEMENT TO BE BOUND**

I, _____ [FULL NAME], of _____
[FULL ADDRESS], declare under penalty of perjury that I have read in its entirety and
understand the Stipulated Protective Order that was issued by the United States District Court for
the Eastern District of Washington on _____, 2021, in the case of *Tooth Acres, LLC et al.*
v. Hoodstock Ranch, LLC et al., Case No. 1:20-cv-3091. I agree to comply with and to be bound
by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure
to so comply could expose me to sanctions and punishment in the nature of contempt. I
solemnly promise that I will not disclose in any manner any information or item that is subject to

STIPULATED PROTECTIVE ORDER
(NO. 1:20-CV-3091-TOR) – 10

1 this Stipulated Protective Order to any person or entity except in strict compliance with the
2 provisions of this Order.
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4 I further agree to submit to the jurisdiction of the United States District Court for the
5 Eastern District of Washington for the purpose of enforcing the terms of this Stipulated
6 Protective Order, even if such enforcement proceedings occur after termination of this action.
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10 Date: _____, 20__.

11 City and State where sworn and signed: _____
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13 Printed Name: _____
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18 Signature: _____
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